

GHAZALI MAT NOOR

v.

SOUTHERN BANK BHD. & OTHER CASES

SUPREME COURT, KUALA LUMPUR

MOHD. AZMI SCJ

HARUN HASHIM SCJ

AJAIB SINGH SCJ

[CIVIL APPEAL NOS. 575, 576, 577, 578 & 579 OF 1987]

15 APRIL 1989

BANKRUPTCY: *Issue of validity of bankruptcy notice - Bankruptcy notice stated rate of interest but did not quantify it - Whether bankruptcy notice should state the exact amount due as at the date of the bankruptcy notice.*

The issue raised in these appeals is the validity of a bankruptcy notice which, *inter alia*, states the rate of interest payable but did not quantify it. It was contended that as the amount of interest due is calculable it need not be quantified in the bankruptcy notice. The learned Judge agreed and held that the decision of the Supreme Court in *Low Mun v. Chung Khiaw Bank Ltd.* [1987] CLJ (Rep) 172 did not apply to the facts of the cases before him.

It was argued that if the interest is not quantified it is sufficient that it be capable of calculation by stating the rate of interest and the period such interest is payable, and if this is done, the bankruptcy notice is good.

Held:

[1] For a bankruptcy notice to be valid, it should state the exact amount due as at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make any calculations or enquiries.

[2] In the present appeals, the interest sums payable have not been quantified. The bankruptcy notice in all five cases are therefore invalid *ab initio* and consequently all subsequent proceedings to these bankruptcy notices are a nullity.

[Appeals allowed with costs.]

Case referred to:

Low Mun v. Chung Khiaw Bank Ltd. [1987] CLJ (Rep) 172

For the appellants in all 5 Appeals - C. Jegathesan; M/s. C. Jegathesan

For the respondent in C.A. 575 of 1987 - Amir b. Md. Zain; M/s. Mokhtar & Co.

For the respondent in C.A. 576 & C.A. 577 of 1987 - Zamzuri b. Mohd. Husin; M/s. Foo Say Ghee & Co.

For the respondent in C.A. 578 of 1987 - Yusof b. Hj. Mohd. Noor; M/s. Yusof & Apandi

For the respondent in C.A. 579 of 1987 - H.S. Lim; M/s. H.S. Lim, Teo & Partners

[Bahasa Malaysia Translation of Headnotes]

KEBANKRAPAN: *Isu keesahan notis kebangkrapan - Notis kebangkrapan menyatakan kadar faedah tetapi tidak menentukan jumlahnya - Samada notis kebangkrapan harus menyatakan jumlah tepat yang kena dibayar seperti pada tarikh notis kebangkrapan.*

- a** Isu yang ditimbulkan dalam rayuan-rayuan ini adalah mengenai keesahan satu notis kebangkrapan di mana, *inter alia*, menyatakan kadar faedah yang harus dibayar tetapi tidak menentukan jumlahnya. Ianya telah dipertikaikan oleh kerana jumlah faedah yang kena dibayar boleh dihitung maka tidak perlu dinyatakan jumlahnya dalam notis kebangkrapan. Hakim yang bijaksana telah menyetujui dan memutuskan bahawa keputusan Mahkamah Agung dalam *Low Mun Iwn. Chung Khiaw Bank Ltd.* [1987] CLJ (Rep) 172 tidak boleh digunakan bagi fakta-fakta dalam kes-kes yang dikemukakan kepadanya.

Telah diujahkan bahawa jika faedah tidak ditentukan jumlahnya adalah memadai bahawa ianya boleh diperhitungkan dengan menyatakan kadar faedah dan tempoh di mana faedah yang sebanyak itu harus dibayar, dan jika ini dilakukan, notis kebangkrapan itu adalah sah.

Diputuskan:

- c** [1] Supaya satu notis kebangkrapan menjadi sah, ia harus menyatakan jumlah tepat yang kena dibayar seperti pada tarikh notis kebangkrapan itu. Si-penghutang penghakiman mestilah tahu jumlah tepat yang beliau harus bayar untuk mengelakkan dari kebangkrapan. Beliau tidak seharusnya membuat apa-apa pengiraan atau pertanyaan.

- d** [2] Dalam rayuan-rayuan sekarang ini, jumlah-jumlah faedah yang harus dibayar telah tidak ditentukan jumlahnya. Notis Kebankrapan dalam kelima-lima kes ini adalah dengan ini tidak sah ab initio dan oleh sebab itu semua prosiding yang kemudian daripada notis-notis kebangkrapan ini adalah satu pembatalan.

[Rayuan-rayuan dibenarkan dengan kos.]

JUDGMENT

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Harun Hashim SCJ:

The issue raised in these appeals is the validity of a bankruptcy notice which, *inter alia*, states the rate of interest payable, but did not quantify it. Thus in Civil Appeal No. 575 of 1987, the bankruptcy notice demanded payment of:

- f** the sum of RM10,459.20 plus interest thereon at the rate of 15.8% per annum on monthly rests from 31 May 1984 to date of realisation and RM373 costs...

In Civil Appeal No. 576 of 1987:

plus further interest at the rate of 8% per annum as from 16 September 1986 to date of settlement ...

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In Civil Appeal No. 577 of 1987:

plus further interest at the rate of 8% per annum as from 16 September 1986 to date of settlement ...

In Civil Appeal No. 578 of 1987:

- h** together with interest thereon at the rate of 16% per annum on monthly rests calculated from 31 July 1985 to the date of realisation...

In Civil Appeal No. 579 of 1987:

together with interest thereon at the rate of 8% per annum from 16 November 1985 to date of realisation ...

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It was contended that as the amount of interest due is **calculable** it need not be quantified in the bankruptcy notice. The learned Judge agreed and held that the decision of this Court in *Low Mun v. Chung Khiaw Bank Ltd.* [1987] CLJ (Rep) 172 did not apply to the facts of the cases before him.

It was argued that if the interest is not quantified it is sufficient that it be capable of calculation by stating the rate of interest and the period such interest is payable; and if this is done, the bankruptcy notice is good. The authority for this proposition is said to be the passage in *Low Mun* at p. 176 where the Court said:

Clearly, the bankruptcy notice was bad in law as it contained demand for payment of the whole judgment debt within seven days when parts of the whole debt had not been or could not be quantified, and as such were incapable of being made the subject of execution and consequently incapable of being complied with.

We do not agree. The judgment must be read as a whole. The words “or could not be” appearing in the passage is a statement of fact of that case and not of law. That this is so is apparent from the sentences immediately following the passage, where the Court said:

Non-compliance with the demand to pay such unascertained sums cannot constitute an act of bankruptcy. **The demand for payment in the notice must not only be quantified but must also be the correct sum owing as at the date of the notice.**

[Emphasis supplied]

Again at p. 177 the Court said:

Instead, the creditor merely reproduced the terms of the judgment on the interest and costs in the bankruptcy notice without quantifying the amounts claimed to be due. The Bankruptcy Act provides expressly that the notice must be to pay the judgment debt “in accordance with the terms of the judgment”... Consequently, we are of the view that when you have the judgment in the usual form that we have here, a bankruptcy notice under the Act must require payment of quantified sum or sums alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice. The duty is on the creditor to state the correct amount due, and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. By demanding payment for unspecified sums in the bankruptcy notice, we hold that such demand is not in accordance with the terms of the judgment, and applying the rule of strict construction, the notice cannot be deemed to fall within s. 3(1) (i) of the Bankruptcy Act. The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period. Non-compliance with the terms of the judgment renders the bankruptcy notice invalid, and that failure to comply with such notice is not an act of bankruptcy, and a bankruptcy petition founded on it must necessarily fail.

For a bankruptcy notice to be valid, therefore, it should state the exact amount due as at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make any calculations or enquiries. How the exact amount is arrived at should be particularised as follows:

Particulars of Amount Claimed

Amount adjudged in the Sessions Court
at Kota Bharu in Summons No. 565 of 1985
dated 16 April 1986

- RM21,924.76

a	Interest at the rate of 8% per annum from 1 October 1985 to 2 October 1986*	-	1,753.98
	Costs	-	685
	Total	-	RM24,363.74

- b** *Date of bankruptcy notice
- In the present appeals, the interest sums payable have not been quantified. The bankruptcy notice in all five cases are therefore invalid *ab initio* and consequently all subsequent proceedings to these bankruptcy notices are a nullity.
- For these reasons, we allowed the appeals with costs and set aside the orders made by the learned Judge.

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Also found at [1989] 2 CLJ 380

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